

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Customs and
Patent Appeals and the United States
Customs Court

Vol. 12

JANUARY 18, 1978

No. 3

This issue contains

T.D. 78-11 through 78-15

Proposed Rulemaking

C.D. 4727

Protest abstracts P77/210 through P77/218

Reap. abstracts R77/152 through R77/154

DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 78-11)

Waiver of Countervailing Duties—Butter Cookies from Denmark

Determination under section 303(d), Tariff Act of 1930, as amended, to waive countervailing duties

DEPARTMENT OF THE TREASURY,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER 1—UNITED STATES CUSTOMS SERVICE

PART 159 — LIQUIDATION OF DUTIES

AGENCY: United States Treasury Department.

ACTION: Waiver of Countervailing Duty.

SUMMARY: This notice is to inform the public that a determination has been made to waive the countervailing duties that would otherwise be required by section 303 of the Tariff Act of 1930. The countervailing duties are waived on bounties or grants paid on imports of Danish butter cookies. The waiver will expire on January 4, 1979, unless revoked earlier.

EFFECTIVE DATE: This waiver of countervailing duties becomes effective on the date of publication of this notice in the **FEDERAL REGISTER**.

FOR FURTHER INFORMATION CONTACT:

Richard B. Self, Office of Tariff Affairs, U.S. Treasury Department, 15th and Pennsylvania Avenue, N.W., Washington, D.C. 20220 (202-566-8585).

SUPPLEMENTARY INFORMATION: In T.D. 78-12, published concurrently with this determination, it has been determined that bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303), are being paid or bestowed,

THE JOURNAL OF THE

ROYAL SOCIETY OF MEDICINE

1881

Vol. 1

Part 1

1881

1881

1881

1881

1881

1881

1881

1881

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1881

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directly or indirectly upon the manufacture, production, or exportation of butter cookies from Denmark.

Section 303(d) of the Tariff Act of 1930, as added by the Trade Act of 1974 (Pub. L. 93-618, January 3, 1975), authorizes the Secretary of the Treasury to waive the imposition of countervailing duties during the 4-year period beginning on the date of enactment of the Trade Act of 1974 if he determines that:

(1) Adequate steps have been taken to reduce substantially or eliminate during such period the adverse effect of a bounty or grant which he has determined is being paid or bestowed with respect to any article or merchandise;

(2) There is a reasonable prospect that, under section 102 of the Trade Act of 1974, successful trade agreements will be entered into with foreign countries or instrumentalities providing for the reduction or elimination of barriers to or other distortions of international trade; and

(3) The imposition of the additional duty under this section with respect to such article or merchandise would be likely to seriously jeopardize the satisfactory completion of such negotiations.

Based upon analysis of all the relevant factors and after consultation with interested agencies, I have concluded that adequate steps have been taken to reduce substantially the adverse effects, or potential adverse effects, of the bounties or grants by virtue of assurances received from the Danish Cake and Biscuit Alliance, which represents all Danish butter cookie exporters, that for the duration of the waiver:

(1) There will be no aggressive marketing by any Danish butter cookie manufacturer of its butter cookie exports to the United States; (The Treasury would interpret aggressive marketing for these purposes as sales in quantities that exceed historic marketing levels.)

(2) There will be no downward adjustments in prices of Danish butter cookie imports quoted C.I.F. at U.S. ports of entry from December 9, 1977; and

(3) Danish butter cookie exporters will not apply for or accept any restitutions, refunds of deposits in connection with purchase of intervention stocks, or other rebates of any kind paid by or through the European Economic Community on exports of the butter content of the Danish butter cookies, in excess of the amounts payable on December 9, 1977.

It is noted that in connection with these undertakings, imports of butter cookies from Denmark were only \$6.7 million in 1976 without having shown measureable increases from previous years. In addition,

Danish butter cookies are a high quality food product, generally sold at high prices. Further, a majority of sales are at prices which exceed those of the equivalent U.S. product. Based on these factors it would appear that the actions taken by the Danish butter cookie exporters not to receive additional benefits reduce substantially the adverse effect caused by the bounties by reducing their potential ability to disrupt seriously sales of U.S. prepackaged butter cookies.

After consulting with appropriate agencies, including the Department of State, the Office of the Special Representative for Trade Negotiations, and the Department of Agriculture, I have further concluded (1) that there is a reasonable prospect that, under section 102 of the Trade Act of 1974, successful trade agreements will be entered into with foreign countries or instrumentalities providing for the reduction or elimination of barriers to or other distortions of international trade; and (2) that the imposition of countervailing duties on butter cookies from Denmark would be likely to seriously jeopardize the satisfactory completion of such negotiations.

Accordingly, pursuant to section 303(d) of the Tariff Act of 1930, as amended, (19 U.S.C. 1303(d)), I hereby waive the imposition of countervailing duties as well as the suspension of liquidation ordered in T.D. 78-12 on butter cookies from Denmark.

This determination may be revoked, in whole or in part, at any time and shall be revoked whenever the basis supporting such determination no longer exists. Unless sooner revoked or made subject to a resolution of disapproval adopted by either House of the Congress of the United States pursuant to section 303(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(e)), this waiver of countervailing duties will, in any event, by statute cease to have force and effect on January 4, 1979.

On or after the date of publication in the *FEDERAL REGISTER* of a notice revoking this determination in whole or in part, the day after the date of adoption by either House of the Congress of a resolution disapproving this "Waiver of Countervailing Duties," or January 4, 1979, whichever occurs first, countervailing duties will be assessable on butter cookies imported directly or indirectly from Denmark in accordance with T.D. 78-12, published concurrently with this determination.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)), is amended by inserting after the last entry for Denmark under the commodity heading "Butter Cookies", the number of this Treasury Decision in the column heading "Treasury Decision", and

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the words "Imposition of countervailing duties waived" in the column headed "Action".

(R.S. 251, secs. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2050; 19 U.S.C. 66, 1303, as amended, 1624.)

Dated: December 28, 1977

PETER D. EHRENHAFT,
*Deputy Assistant Secretary
and Special Counsel (Tariff Affairs)*

[Published in the FEDERAL REGISTER January 5, 1978 (43 FR 955)]

(T.D. 78-12)

Countervailing Duties—Butter Cookies from Denmark

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 159 — LIQUIDATION OF DUTIES

AGENCY: United States Treasury Department.

ACTION: Final Countervailing Duty Determination.

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a determination that the Government of Denmark has given benefits which constitute bounties or grants under the Countervailing Duty Law (19 USC 1303), on the manufacture or exportation of butter cookies. However, countervailing duties are being waived under the temporary waiver provisions of the Act.

EFFECTIVE DATE: January 5, 1978.

FOR FURTHER INFORMATION CONTACT:

David P. Mueller, Operations Officer, Duty Assessment Division,
United States Customs Service, 1301 Constitution Avenue, NW,
Washington, D.C. 20229, telephone (202) 566-5492.

SUPPLEMENTARY INFORMATION: On July 6, 1977, a "Notice of Preliminary Countervailing Duty Determination" was published in the FEDERAL REGISTER (42 FR 34562). The notice stated that on the basis on an investigation conducted pursuant to section 159.47(c), Customs Regulations (19 CFR 159.47(c)), a preliminary countervailing duty determination had been made stating that bounties or grants were being paid or bestowed, directly or indirectly, within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as "the Act")

THE
JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE
VOLUME 10
PART 1
1980

CONTENTS

1. *The evolution of man* (J. Huxley)
2. *The evolution of man* (J. Huxley)
3. *The evolution of man* (J. Huxley)
4. *The evolution of man* (J. Huxley)
5. *The evolution of man* (J. Huxley)
6. *The evolution of man* (J. Huxley)
7. *The evolution of man* (J. Huxley)
8. *The evolution of man* (J. Huxley)
9. *The evolution of man* (J. Huxley)
10. *The evolution of man* (J. Huxley)
11. *The evolution of man* (J. Huxley)
12. *The evolution of man* (J. Huxley)
13. *The evolution of man* (J. Huxley)
14. *The evolution of man* (J. Huxley)
15. *The evolution of man* (J. Huxley)
16. *The evolution of man* (J. Huxley)
17. *The evolution of man* (J. Huxley)
18. *The evolution of man* (J. Huxley)
19. *The evolution of man* (J. Huxley)
20. *The evolution of man* (J. Huxley)

on the manufacture, production or exportation of butter cookies from Denmark. Measures preliminarily determined to constitute bounties or grants included the sale of butter from EEC intervention stocks at below market prices, and export restitution payments on eggs, wheat flour, and sugar used in the production of butter cookies.

The notice further states that before a final determination would be made, consideration would be given to any relevant data, views or arguments submitted in writing within 30 days from the date of publication of the "Notice of Preliminary Determination."

After consideration of all information received, it is hereby determined that bounties or grants are paid or bestowed directly or indirectly, on exports of butter cookies from Denmark within the meaning of section 303 of the Act. The bounties or grants are in the form of rebates of deposits when intervention stock butter is sold for use in baked goods and export restitution payments on the content of eggs, flour, sugar, and butter in exported butter cookies.

Accordingly, notice is hereby given that butter cookies imported directly or indirectly from Denmark, if entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *FEDERAL REGISTER*, will be subject to payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303, the net amount of the bounties or grants has been ascertained and determined, or estimated, to be refunds referred to in Regulation (EEC) No. 2682/72 applicable on the exportation of butter cookies, as set forth by the regulations of the European Communities as published in the *Official Journal of the European Communities*. Rules governing sales of butter from EC intervention stocks are contained in Regulation (EEC) No. 232/75.

To the extent that it has been or can be established to the satisfaction of the Commissioner of Customs that imports of butter cookies from Denmark are subject to a bounty or grant in an amount other than that applicable under the above declaration, the amount so established shall be assessed and collected on such dutiable imports of butter cookies.

Effective on or after the date of publication of this notice in the *FEDERAL REGISTER* and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable butter cookies imported directly or indirectly from Denmark, which benefit from bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration.

The liquidation of all entries for consumption of such dutiable butter cookies imported directly or indirectly from Denmark, which benefit from these bounties or grants, and are subject to this order, shall be suspended pending declarations of the net amounts of the bounties or grants paid.

Notwithstanding the above, a notice of "Waiver of Countervailing Duties" is being published concurrently with this order in accordance with section 303(d) of the Tariff Act of 1930, as amended (19 USC 1303(d)). At such time as the waiver ceases to be effective, in whole or in part, a notice will be published setting forth the deposit of estimated countervailing duties which will be required at the time of entry, or withdrawal from warehouse, for consumption of each product then subject to the payment of countervailing duties.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for Denmark the words "Butter Cookies" in the column headed "Commodity."

The column headed "Treasury Decision" is amended by inserting the number of this Treasury Decision and the words "bounty declared—rate" in the column headed "Action". This notice is published pursuant to section 303 of the Act. (R.S. 251, as amended, sections 303, 624, 46 Stat. 687, as amended, 759 (19 USC 66, 1303, 1624)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 Revision 14, July 1, 1977, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954, and § 159.47(d), insofar as they pertain to countervailing duty orders by the Commissioner of Customs, are hereby waived.

Dated December 28, 1977:

PETER D. EHRENHAFT,
*Deputy Assistant Secretary
and Special Counsel (Tariff Affairs).*

[Published in the FEDERAL REGISTER January 5, 1978 (43 FR 956)]

(T.D. 78-13)

Notice of Modification or Revocation of Dumping Finding

Antidumping—Elemental Sulphur from Mexico; Section 153.46, Customs Regulations, amended

DEPARTMENT OF THE TREASURY,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 153 — ANTIDUMPING

AGENCY: United States Treasury Department.

ACTION: Modification of Dumping Finding.

SUMMARY: This notice is to inform the public that Azufrera Panamericana S.A. of Mexico is no longer selling elemental sulphur from Mexico at less than fair value under the Antidumping Act, 1921. Sales at less than fair value generally occur when the price of merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries. In addition, Azufrera has given assurances that future sales will not be at less than fair value. As a result of this action, Azufrera's shipments of this merchandise from Mexico which were entered, or withdrawn from warehouse, for consumption on or after September 8, 1977, will not be liable for special dumping duties.

EFFECTIVE DATE: January 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. David P. Mueller, Operations Officer, U.S. Customs Service,
Office of Operations, Duty Assessment Division, Technical
Branch, 1301 Constitution Avenue, NW., Washington, D.C.
20229, telephone (202-566-5492).

SUPPLEMENTARY INFORMATION: On June 28, 1972, a finding of dumping with respect to elemental sulphur from Mexico was published in the FEDERAL REGISTER as Treasury Decision 72-179 (37 FR 12727). A "Notice of Tentative Determination to Modify or Revoke Dumping Finding" with respect to this merchandise from Mexico, produced and sold by Azufrera Panamericana, S.A. (Azufrera), was published in the FEDERAL REGISTER of September 8, 1977 (42 FR 45059).

THE
JOURNAL
OF
THE
ROYAL ANTHROPOLOGICAL INSTITUTE
VOLUME 10
PART 1
1980

CONTENTS

1. The evolution of man: a review of the evidence
2. The evolution of man: a review of the evidence
3. The evolution of man: a review of the evidence
4. The evolution of man: a review of the evidence
5. The evolution of man: a review of the evidence
6. The evolution of man: a review of the evidence
7. The evolution of man: a review of the evidence
8. The evolution of man: a review of the evidence
9. The evolution of man: a review of the evidence
10. The evolution of man: a review of the evidence

Reasons for the tentative determination were published in the above-mentioned notice and interested persons were afforded an opportunity to provide written submissions or request the opportunity to present oral views in connection therewith.

No written submission or requests having been received, I hereby determine that, for the reasons stated in the "Notice of Tentative Determination to Modify or Revoke Dumping Finding," elemental sulphur from Mexico, produced and sold by Azufrera, is not being, nor likely to be, sold at less than fair value, and T.D. 72-179 is hereby modified to exclude the subject merchandise produced and sold by Azufrera.

Accordingly, section 153.46 of the Customs Regulations (19 CFR 153.16) is amended to exclude elemental sulphur from Mexico, produced and sold by Azufrera from that finding of dumping:

<i>Merchandise</i>	<i>Country</i>	<i>T.D.</i>	<i>Modified by</i>
Elemental sulphur, except that produced and sold by Azufrera Panamericana S.A.	Mexico	72-179	78-13

This notice is published pursuant to section 153.44(d) of the Customs Regulations (19 CFR 153.44(d)).

(Sec. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173).

Dated December 29, 1977:

HENRY C. STOCKELL, JR.,
Acting General Counsel of the Treasury.

[Published in the FEDERAL REGISTER January 5, 1978 (43 FR 954)]

(T.D. 78-(14)

Foreign Currencies—Certification of Rates

Rates of exchange certified to the Secretary of the Treasury by the
Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 22, 1977.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 77-260 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs

purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Austria schilling:

December 6, 1977	.....	\$0. 0643
December 7, 1977	.....	. 0642½
December 8, 1977	.....	. 0643½
December 13, 1977	.....	. 0647¼
December 14, 1977	.....	. 0653
December 15, 1977	.....	. 0648½
December 16, 1977	.....	. 0650

Belgium franc:

December 14, 1977	.....	\$0. 029744
December 15, 1977	.....	. 029540
December 16, 1977	.....	. 029660

Germany deutsche mark:

December 6, 1977	.....	\$0. 4600
December 7, 1977	.....	. 4617
December 8, 1977	.....	. 4590
December 12, 1977	.....	. 4600
December 13, 1977	.....	. 4648
December 14, 1977	.....	. 4686
December 15, 1977	.....	. 4670
December 16, 1977	.....	. 4678

Ireland pound:

December 14, 1977	.....	\$1. 8470
December 15, 1977	.....	1. 8465
December 16, 1977	.....	1. 8540

Japan yen:

December 5, 1977	.....	\$0. 004132
December 6, 1977	.....	. 004139
December 7, 1977	.....	. 004142
December 8, 1977	.....	. 004137
December 9, 1977	.....	. 004126
December 12, 1977	.....	. 004136
December 13, 1977	.....	. 004157½
December 14, 1977	.....	. 004205
December 15, 1977	.....	. 004182
December 16, 1977	.....	. 004156½

Netherlands guilder:

December 14, 1977	.....	\$0. 4310
December 15, 1977 4308
December 16, 1977 4305

Norway krone:

December 14, 1977	-----	\$0. 1920
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Sri Lanka rupee:

December 5-9, 1977	-----	\$0. 0620
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December 12-16, 1977	-----	. 0620
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Switzerland franc:

December 5, 1977	-----	\$0. 4706
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December 6, 1977	-----	. 4703
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December 7, 1977	-----	. 4714
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December 8, 1977	-----	. 4701
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December 9, 1977	-----	. 4675
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December 12, 1977	-----	. 4709
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December 13, 1977	-----	. 4748
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December 14, 1977	-----	. 4812
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December 15, 1977	-----	. 4832
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December 16, 1977	-----	. 4855
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United Kingdom pound:

December 14, 1977	-----	\$1. 8470
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December 15, 1977	-----	1. 8465
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December 16, 1977	-----	1. 8540
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(LIQ-3)

BEN L. IRVIN,
for JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

(T.D. 78-15)

Foreign Currencies—Daily Rates for Countries Not On Quarterly List

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 22, 1977.

The Federal Reserve Bank of New York, pursuant to section 522(c); Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and

use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Hong Kong dollar:

December 5, 1977	\$0.2155
December 6, 1977	.2155
December 7, 1977	.2151
December 8, 1977	.2150
December 9, 1977	.2150
December 12, 1977	.2154½
December 13, 1977	.2155
December 14, 1977	.2155
December 15, 1977	.2154
December 16, 1977	.2156

Iran rial:

December 5-9, 1977	\$0.0141
December 12, 1977	.0141
December 13, 1977	.0142
December 14, 1977	.0142
December 15, 1977	.0142
December 16, 1977	.0142

Philippines peso:

December 5-9, 1977	\$0.1354
December 12, 1977	.1354
December 13, 1977	.1354
December 14, 1977	.1354
December 15, 1977	.1355½
December 16, 1977	.1354

Singapore dollar:

December 5, 1977	\$0.4240
December 6, 1977	.4246
December 7, 1977	.4255
December 8, 1977	.4245
December 9, 1977	.4245
December 12, 1977	.4244
December 13, 1977	.4258
December 14, 1977	.4265
December 15, 1977	.4270
December 16, 1977	.4267

Thailand baht (tical):

December 5-9, 1977----- \$0.0490

December 12-16, 1977----- .0490

(LIQ-3)

BEN L. IRVIN,
for JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

U.S. Customs Service

Proposed Rulemaking

(19 CFR Part 141)

Entry of Merchandise

Proposed amendments to the Customs Regulations relating to the documents and information required to be filed at the time of importation of certain articles of steel

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: It is proposed to amend the Customs Regulations to require that a special invoice be presented to Customs for each shipment of certain articles of steel having an aggregate purchase price over \$2,500. The additional information provided by the special invoice would be used in the administration and enforcement of the Antidumping Act, 1921, as amended.

DATES: Comments must be received on or before January 27, 1978.

ADDRESS: Comments should be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

With respect to the trigger price mechanism (described under "SUPPLEMENTARY INFORMATION," below), Peter D. Ehrenhaft, Deputy Assistant Secretary and Special Counsel (Tariff Affairs), Department of the Treasury, Washington, D.C. 20220 (202-566-2806). With respect to other aspects of the proposal, Ben L. Irvin, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8121).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Acting under the authority of section 201(a) of the Antidumping Act of 1921, as amended (19 U.S.C. 160(a)), and section 153.25 of the Customs Regulations, the Secretary of the Treasury will implement a "trigger price mechanism" as recommended to, and approved by, the President on December 6, 1977. The trigger price mechanism ("TPM") will consist of four parts: (1) the establishment of trigger prices for steel mill products imported into the United States; (2) adoption of a new Special Summary Steel Invoice ("SSSI") applicable to imports of all steel mill products; (3) the continuous collection and analysis of data concerning (a) the cost of production and prices of steel mill products in the countries that are the principal exporters of such products to the United States, and (b) the condition of the domestic steel industry; and (4) where appropriate, the expedited initiation and disposition of proceedings under the Antidumping Act of 1921 with respect to imports below the trigger prices.

(1) *Establishment of Trigger Prices.*

The Secretary of the Treasury intends to publish shortly "trigger prices" for the steel mill products so identified by the American Iron and Steel Institute (AISI) that are imported in significant quantities. Each such "trigger price" will be calculated from the best evidence available concerning the cost of production of that product by the industry considered to be the world's most efficient. At this time, this have been determined to be the Japanese steel industry. Initial trigger prices are now being developed from information collected from the six largest and some non-integrated smaller producers, and made available to the Treasury Department by the Japanese Ministry of International Trade and Industry. Such data has been adjusted to reflect yields of production and capacity utilization over the average business cycles of three years. The establishment of a trigger price for any particular steel mill product is not intended to suggest that the cost of production of such product may not be higher or lower in the case of any particular exporting company.

The Secretary will also publish a complete set of trigger prices for the "extras" usual in the steel trade, applicable to the steel mill products for which base prices are fixed. (Trigger prices for alloy and wire products will be announced shortly.)

For the purposes of the trigger price mechanism, stainless steel products, presently subject to import restraints, will be excluded from the TPM, as will other specialty steel products which have not entered the United States in significant quantities in the recent past, even if categorized as "steel mill products." Similarly, fabricated articles and other items not presently included as "steel mill products" by the

AISI will be excluded. However, consideration will be given to including additional products should circumstances warrant following the initiation of the program.

The trigger base prices and extras will be reviewed quarterly as more current cost information becomes available. Trigger prices will be published sometime in advance of the calendar quarter to which they will apply. The unit invoice prices of all imports, whenever entered, will be compared with the trigger prices in effect as of the date the shipment was loaded for export to United States ports. The initial trigger prices will be applicable to all shipments between the date of their publication through the second quarter of 1978. The application of the trigger prices to contracts concluded before the announcement of the trigger prices will be addressed in a subsequent notice.

For purposes of determining whether or not to initiate an investigation, the total unit invoice price of each import will be compared with the aggregate trigger base price plus all extras for that product. Such unit invoice price, as well as the base price plus extras, are to be shown on the SSSI. The fact that any particular item reflected on the SSSI is not at or above the trigger prices established by the Secretary will not, by itself, result in any action by the Department.

(2) *Use of the SSSI.*

This notice sets forth proposed regulations prescribing the use of the SSSI in connection with imports of all steel mill products subject to the TPM. This form is modeled on the present Special Customs Invoice (Customs Form 5515), and is intended to permit the identification of the base prices and all extras. The proposed regulations would require that an SSSI be presented for each shipment having an aggregate purchase price over \$2,500 and containing any of the steel mill products subject to the TPM.

A duplicate copy of the SSSI will be forwarded immediately upon receipt by the Customs Service to the Special Customs Steel Task Force in Washington for analysis. Forms reflecting substantial or repeated shipments below trigger prices may result in prompt informal inquiries or such other action as the Secretary deems appropriate, as more fully described in (4) below. It is essential to the operation of the monitoring system that exporters forward commercial invoices and the SSSI's immediately upon the export of the products, so that they may arrive prior to the shipment to which they apply. In any case, SSSI's will be required as a condition of entry. For shipments which are released from Customs custody under immediate delivery

procedures, importers should be aware that if they are unable to produce the SSSI, entry may not be made and redelivery of the merchandise would be required.

(3) *Collection and Analysis of Data.*

Throughout the duration of the TPM, the Special Customs Steel Task Force will collect information concerning the costs of production and prices in the home markets (or quoted for export to third countries) by producers in the principal steel exporting countries of the world. Such data will be used in the periodic review of trigger prices and in the evaluation of cases in which SSSI's reflect sales below trigger prices.

In addition, information will be collected on a continuous basis concerning the condition of the United States industry. Data with respect to capacity utilization, employment, profitability, shipments, shares of the market, and other indicia of the economic condition of the industry will be monitored to determine whether imports of steel mill products are causing or threatening to cause injury to the United States industry.

(4) *Initiation and Disposition of Proceedings Under the Antidumping Act.*

All SSSI's reflecting imports below the trigger prices applicable to the quarter in which the shipment was made will be evaluated by the Special Customs Steel Task Force. Informal inquiry may then—but need not—be made of the importer to determine the basis for the entry below the trigger price. Unless the Secretary is promptly satisfied, on the basis of such informal inquiry, that no reasonable possibility of sales at less than fair value of such merchandise may be found, the Secretary will promptly publish an Antidumping Proceeding Notice pursuant to section 153.31(a) of the Customs Regulations. It is the intention of the Department of the Treasury to expedite a full scale antidumping investigation of such possible sales at less than fair value, so that a Tentative Determination as to the belief or suspicion of the existence of such sales at less than fair value can be made within a period substantially shorter than the six months provided in section 153.32 of the Customs Regulations. In appropriate cases, the Secretary may also issue a "Withholding of Appraisement Notice" providing for the retroactive withholding of appraisement pursuant to section 153.35(d) of the Customs Regulations. In all other respects, foreign exporters, importers and the affected United States industry will retain any and all rights otherwise available under the Antidumping Act and its implementing regulations.

SPECIAL SUMMARY STEEL INVOICE

A sample of the proposed new form, to be titled the "Special Summary Steel Invoice" (SSSI), follows:

DEPARTMENT OF THE TREASURY UNITED STATES CUSTOMS SERVICE 1925 G. 1481, 1482, 1484 - 27-6-70				SPECIAL SUMMARY STEEL INVOICE (Prepare in Duplicate)				ADDITIONAL SPACE FOR EXTRAS SHOWN IN BOX 11.			
1. REFERENCES		2. BUYER (If other than consignor)		3. ORIGIN OF GOODS		4. DATE PRICE TERMS AGREED TO, DATE OF EXPORTATION		5. DISCOUNTS			
6. SIGNATURE		7. DECLARATION OF SELLER/SHIPPER (OR AGENT)		8. SIGNATURE OF BUYER/SHIPPER (OR AGENT)		9. SIGNATURE OF SELLER/SHIPPER (OR AGENT)		10. SIGNATURE OF BUYER/SHIPPER (OR AGENT)			
12. DECLARATION OF SELLER/SHIPPER (OR AGENT)				13. CODE FOR OTHER EXTRAS				14. PRICE AND COSTS			
<input type="checkbox"/> I hereby declare that the goods described herein are of the kind, quality and quantity stated, and that they are the property of the person or persons named in the invoice, and that they are not subject to any lien or claim of any kind.				A. Through B. Export C. Special D. Special E. Other (Specify)				15. PRICE AND COSTS 16. PRICE AND COSTS 17. PRICE AND COSTS 18. PRICE AND COSTS 19. PRICE AND COSTS 20. PRICE AND COSTS 21. PRICE AND COSTS 22. PRICE AND COSTS 23. PRICE AND COSTS 24. PRICE AND COSTS 25. PRICE AND COSTS 26. PRICE AND COSTS 27. PRICE AND COSTS 28. PRICE AND COSTS 29. PRICE AND COSTS 30. PRICE AND COSTS 31. PRICE AND COSTS 32. PRICE AND COSTS 33. PRICE AND COSTS 34. PRICE AND COSTS 35. PRICE AND COSTS 36. PRICE AND COSTS 37. PRICE AND COSTS 38. PRICE AND COSTS 39. PRICE AND COSTS 40. PRICE AND COSTS 41. PRICE AND COSTS 42. PRICE AND COSTS 43. PRICE AND COSTS 44. PRICE AND COSTS 45. PRICE AND COSTS 46. PRICE AND COSTS 47. PRICE AND COSTS 48. PRICE AND COSTS 49. PRICE AND COSTS 50. PRICE AND COSTS 51. PRICE AND COSTS 52. PRICE AND COSTS 53. PRICE AND COSTS 54. PRICE AND COSTS 55. PRICE AND COSTS 56. PRICE AND COSTS 57. PRICE AND COSTS 58. PRICE AND COSTS 59. PRICE AND COSTS 60. PRICE AND COSTS 61. PRICE AND COSTS 62. PRICE AND COSTS 63. PRICE AND COSTS 64. PRICE AND COSTS 65. PRICE AND COSTS 66. PRICE AND COSTS 67. PRICE AND COSTS 68. PRICE AND COSTS 69. PRICE AND COSTS 70. PRICE AND COSTS 71. PRICE AND COSTS 72. PRICE AND COSTS 73. PRICE AND COSTS 74. PRICE AND COSTS 75. PRICE AND COSTS 76. PRICE AND COSTS 77. PRICE AND COSTS 78. PRICE AND COSTS 79. PRICE AND COSTS 80. PRICE AND COSTS 81. PRICE AND COSTS 82. PRICE AND COSTS 83. PRICE AND COSTS 84. PRICE AND COSTS 85. PRICE AND COSTS 86. PRICE AND COSTS 87. PRICE AND COSTS 88. PRICE AND COSTS 89. PRICE AND COSTS 90. PRICE AND COSTS 91. PRICE AND COSTS 92. PRICE AND COSTS 93. PRICE AND COSTS 94. PRICE AND COSTS 95. PRICE AND COSTS 96. PRICE AND COSTS 97. PRICE AND COSTS 98. PRICE AND COSTS 99. PRICE AND COSTS 100. PRICE AND COSTS		15. PRICE AND COSTS	
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INSTRUCTIONS FOR PREPARATION OF SPECIAL SUMMARY STEEL INVOICE

(on reverse side of form)

(Required for all shipments of iron or steel valued over \$2,500)

Note: Where this summary invoice covers several types of merchandise priced in different ways, each should be shown separately. *Prepare in duplicate.*

Section 1-7, 9, 10, 12, 13, 15, 16, and 19-26 may be completed in the same manner as the equivalent sections on Special Customs Invoice, Customs Form 5515.

Section 8A. Data Price Terms Agreed: Show here the date on which the final sales price for this shipment was agreed.

Section 8B. Date of Exportation: Show here the date on which the merchandise left the last port in the country of exportation.

Section 11. Codes for extras: This section refers to the additional price charged for extras other than width and length. The code(s) for the extras shown should be reflected in section 18c, and the amount, total for combinations of extras, should be shown in 18d. The extras listed are expressed in terms as now understood in the U.S. market. K-N of section 11 should be completed for extras not itemized.

Section 14. AISI Category: This column should be completed with the appropriate category number from the list below.

Section 17. Base Price: Show here for each steel category the base price on which the total sales price was based.

Section 18. Extras: Show here the charge for each category of any extra added to the base price. Use appropriate codes from section 11 where appropriate.

Category No.	Products
I	Ingots, blooms, billets, slabs, etc.
II	Wire rods
III	Structural shapes—Plain 3" & over
IV	Sheet piling
V	Plates
VI	Rail and track accessories
VII	Wheels and axles
VIII	Concrete reinforcing bars
IX	Bar shapes under 3"
X	Bars—Hot rolled—Carbon
XI	Bars—Hot rolled—Alloy
XII	Bars—Cold finished
XIII	Hollow drill steel
XIV	Welded pipe and tubing
XV	Other pipe and tubing
XVI	Round and shaped wire
XVII	Flat wire
XVIII	Bale ties
XIX	Galvanized wire fencing
XX	Wire nails
XXI	Barbed wire
XXII	Black plate
XXXIII	Tin plate
XXIV	Terne plate
XXV	Sheets—Hot rolled
XXVI	Sheets—Cold rolled
XXVII	Sheets—Coated (incl. galvanized)
XXVIII	Sheets—Coated—Alloy
XXIX	Strip—Hot rolled
XXX	Strip—Cold rolled
XXXI	Strip—Hot & Cold rolled—Alloy
XXXII	Sheets other—Electric coated

AUTHORITY

The authority for the proposed amendments is R.S. 251, as amended (19 U.S.C. 66), section 407, 42 Stat. 18 (19 U.S.C. 173), sections 481, 484, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 1481, 1484, 1624, 77A Stat. 14, Tariff Schedules of the United States (19 U.S.C. 1202, General Headnote 11).

COMMENTS

The Customs Service invites written comments from all interested parties on the proposed amendments. Comments submitted will be available for public inspection in accordance with section 013.8(b)

of the Customs Regulations (19 CFR 103.8(b)) during regular business hours at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C.

DRAFTING INFORMATION

The principal authors of this document were Edward T. Rosse and Paul G. Hegland, Regulations and Legal Publications Division, U.S. Customs Service. However, other personnel in the Customs Service and the Department of the Treasury assisted in its development.

PROPOSED AMENDMENTS

PART 141 — ENTRY OF MERCHANDISE

It is proposed to amend the first sentence of section 141.81 of the Customs Regulations (19 CFR 141.81) to read as follows:

§ 141.81 Invoice for each shipment.

A special Customs invoice, a special summary invoice, or a commercial invoice shall be presented for each shipment of merchandise at the time of entry, subject to the conditions set forth in these regulations. * * *

It is proposed to add a new paragraph (e) to section 141.82 of the Customs Regulations (19 CFR 141.82(e)) to read as follows:

§ 141.82 Invoice for installment shipments arriving within a period of 10 days.

* * * * *

(e) *Special summary invoice.* The provisions of this section shall not apply if a special summary invoice is required by section 141.83(b).

It is proposed to redesignate present paragraphs (b) and (c) of section 141.83 of the Customs Regulations (19 CFR 141.83(b), (c)) as paragraphs (c) and (d), respectively, of that section, and to add a new paragraph (b) to section 141.83 to read as follows:

§ 141.83 Type of invoice required.

* * * * *

(b) *Special summary invoice.* A special summary invoice shall be presented for each shipment of merchandise described in section 141.89(b). The district director may waive production of a special Customs invoice (Customs Form 5515) if a special summary invoice is required.

* * * * *

It is proposed to amend section 141.89 of the Customs Regulations (19 CFR 141.89) by designating the present provisions of that section as paragraph (a) and adding a new paragraph (b) to that section to read as follows:

§ 141.89 Additional information for certain classes of merchandise.

* * * * *

(b) *Special summary steel invoice.*

(1) A Special Summary Steel Invoice (Customs Form——) shall be presented in duplicate for each shipment which is determined by the district director to have an aggregate purchase price over \$2,500, including all expenses incident to placing the merchandise in condition packed ready for shipment to the United States, and which contains any of the articles of steel listed in paragraph (b)(2) of this section. In addition to the information required by section 141.86, the Special Summary Steel Invoice shall set forth the following:

(A) The date price terms were agreed upon (the date of agreement on the final sales price for the shipment).

(B) Description and cost of extras (a description of, and the additional price charged for, extras, other than width and length, with the extras described in terms understood in the United States market).

(C) American Iron and Steel Institute (AISI) category.

(D) Base price (the base price for each steel category on which the total sales price was based).

(2) The following articles of steel are subject to the special invoice requirements of section 141.89(b)(1):

(A) Ingots, blooms, billets, slabs, etc.

(B) Wire rods.

(C) Structural shapes—plain 3 inches and over.

(D) Sheet piling.

(E) Plates.

(F) Rail and track accessories.

(G) Wheels and axles.

(H) Concrete reinforcing bars.

(I) Bar shapes under 3 inches.

(J) Bars—hot rolled—carbon.

(K) Bars—hot rolled—alloy.

(L) Bars—cold finished.

(M) Hollow drill steel.

(N) Welded pipe and tubing.

- (O) Other pipe and tubing.
- (P) Round and shaped wire.
- (Q) Flat wire.
- (R) Bale ties.
- (S) Galvanized wire fencing.
- (T) Wire nails.
- (U) Barbed wire.
- (V) Black plate.
- (W) Tin plate.
- (X) Terne plate.
- (Y) Sheets—hot rolled.
- (Z) Sheets—cold rolled.
- (AA) Sheets—coated incl. galvanized.
- (BB) Sheets—coated—alloy.
- (CC) Strip—hot rolled.
- (DD) Strip—cold rolled.
- (EE) Strip—hot and cold rolled—alloy.
- (FF) Sheets other—electric coated

It is proposed to amend the introductory clause of section 141.91 of the Customs Regulations (19 CFR 141.91) to read as follows:

§ 141.91 Entry without required invoice.

If a required invoice, other than a special summary invoice, is not available in proper form at the time of entry and a waiver in accordance with section 141.92 is not granted, the entry shall be accepted only under the following conditions: * * *

* * * * *

It is proposed to amend the introductory clause of section 141.92(a) of the Customs Regulations (19 CFR 141.92(a)) to read as follows:

§ 141.92 Waiver of invoice requirements.

(a) *When waiver may be granted.* The district director may waive production of a required invoice, except a special summary invoice required by section 141.83(b), when he is satisfied that either: * * *

* * * * *

R. E. CHASEN,
Commissioner of Customs.

Approved December 28, 1977:

ANTHONY M. SOLOMON,
Acting Secretary of the Treasury.

[Published in the FEDERAL REGISTER December 30, 1977 (42 FR 65214)]

Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza
New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Scovel Richardson
Frederick Landis

James L. Watson
Herbert N. Maletz
Bernard Newman
Nils A. Boe

Senior Judge

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Customs Decisions

(C.D. 4727)

JAMES LOUDON & CO., INC. v. UNITED STATES

American goods returned—Marine cleanser

Court No. 73-7-01978

Port of San Francisco

(Decided December 20, 1977)

[Judgment for defendant.]

Glad, Tuttle & White (Robert Glenn White and T. Randolph Ferguson of counsel)
for the plaintiff.

Barbara Allen Babcock, Assistant Attorney General (Velta A. Melnbrencis, trial
attorney), for the defendant.

MALETZ, Judge: This action involves a shipment of 21 drums of marine cleanser or degreaser invoiced as "Petrocon" and known as "Dunall Dunrinse," which is used for cleaning the holds or bottoms of ships. The official entry papers and accompanying documents were lost by the Bureau of Customs. However, documents presented to the court by the parties reveal that the merchandise was entered at the port of San Francisco, California on or about August 12, 1966 by plaintiff James Loudon & Co., Inc., a customhouse broker, for the account of Dunn Chemical Co. under entry number 00751. The plaintiff's copy of the consumption entry lists the value of the merchandise at \$3,696.00 and claims classification as American goods returned under item 800.00 of the Tariff Schedules of the United States (TSUS) which carries a duty-free rate.

The entry was liquidated by Customs on December 12, 1967 and assessed duty of 3.5 cents per pound plus 25% ad valorem under item 405.35, TSUS, which covers—

[p]roducts * * * chiefly used for any one or combination of the following purposes: as detergents, wetting agents, emulsifiers, dispersents, or foaming agents.

The increased duty of \$1,313.55 was paid in or about April 1971.

The protest in this action was filed on February 21, 1973 against the assessment of duties under item 405.35. However, *this* protest does *not* challenge the liquidation of December 12, 1967; rather, it challenges Customs' refusal of plaintiff's request for reliquidation, which request plaintiff claims was filed on February 6, 1968 under section 520(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1520(c)).¹ According to plaintiff, this request for reliquidation was not acted upon by Customs until January 12, 1973 when it was denied, thus making plaintiff's protest of February 21, 1973 timely under section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514 (1970 ed.)).²

Plaintiff's claim in essence is that the imported merchandise was exported aboard the S.S. NILOS from Portland, Oregon as ships stores, which are materials used and consumed in the normal opera-

¹ Section 520(c) of the Tariff Act of 1930, as amended (in effect prior to October 1, 1970), provided:

(c) Notwithstanding a valid protest was not filed, the Secretary of the Treasury may authorize a collector to reliquidate an entry to correct—

(1) a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, appraisement, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the customs service within one year after the date of entry, appraisement, or transaction, or within sixty days after liquidation or exaction when the liquidation or exaction is made more than ten months after the date of the entry, appraisement, or transaction; * * *

² Section 514, as amended effective October 1, 1970, requires a protest to be filed within 90 days after liquidation or reliquidation or refusal to reliquidate under section 520(c). Prior to October 1, 1970, section 514 required the protest to be filed within 60 days.

tion of a vessel. Plaintiff claims that the merchandise was later returned to the United States from Vancouver, British Columbia without having been advanced in value or improved in condition while abroad and was therefore entitled to duty-free entry as American goods returned under item 800.00, TSUS. It asserts that it filed a timely protest under section 514 of the Tariff Act of 1930, as amended, against classification by the Bureau of Customs under item 405.35 within 60 days after liquidation on December 12, 1967, which protest it alleges was lost by Customs. Also, as already noted, plaintiff contends that on February 6, 1968 it filed a request for reliquidation under section 520(c) of the Tariff Act of 1930, within 60 days of the liquidation (December 12, 1967) which request was allegedly not acted upon by Customs until January 12, 1973, following which it filed a protest on February 21, 1973.

Defendant presents several arguments as to why plaintiff's claim should be dismissed. First, as to the claimed lost protest, defendant argues that plaintiff did not in fact file a section 514 protest challenging the Customs' classification of the merchandise under item 405.35. Second, it argues that in any event the issue of proper classification and assessment of duties based upon the allegedly lost protest under section 514 is not before the court since the present action is based on a protest which merely challenges a refusal to reliquidate under section 520(c).

Further, with regard to plaintiff's protest filed on February 21, 1973, challenging Customs' refusal to reliquidate under section 520(c), defendant contends that plaintiff failed to comply with the statutory requirements of Section 520(c) in that it did not bring any clerical error, mistake of fact or other inadvertence not amounting to an error in the construction of a law to the attention of Customs within the statutory period of 60 days after the liquidation of December 12, 1967.³ More particularly, defendant argues that the record shows that request for reliquidation under section 520(c) was not filed on February 6, 1968, as claimed by plaintiff, but rather was filed on August 26, 1968 and was thus untimely. Defendant further argues that the record shows that plaintiff's request for reliquidation was denied by Customs on October 24, 1968 and not January 12, 1973, as claimed by plaintiff, and that the protest of February 21, 1973 was therefore untimely. Finally, defendant insists that plaintiff failed to

³ It will be recalled that the liquidation of December 12, 1967 took place 16 months after the entry of the merchandise on August 12, 1966. Under section 520(c), as previously noted, when a liquidation is made more than ten months after the date of entry—as it was here—a request for reliquidation based upon a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law must be made within 60 days after liquidation.

submit sufficient proof to substantiate its claim that the merchandise was entitled to duty-free entry under item 800.00. Hence, defendant's position with regard to the protest filed on February 21, 1973 is that Customs properly refused to reliquidate the entry under section 520(c).

The Issues

Against this background, the following issues are presented:

1. Whether plaintiff filed a protest under section 514, contesting the liquidation of the merchandise under item 405.35, TSUS, and assessment of duty at the rate of 3.5¢ per lb. plus 25% ad valorem.
2. Whether plaintiff timely brought any clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, to Customs' attention as provided in section 520(c).
3. Whether plaintiff filed a timely protest under section 514 against the refusal to reliquidate under section 520(c).
4. Whether any clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law occurred in the liquidation.
5. Whether plaintiff timely complied with all applicable Customs regulations for duty-free entry under TSUS item 800.00.
6. Whether Customs improperly denied plaintiff's request for reliquidation under section 520(c).

The Record

The record consists of the testimony of two witnesses⁴ and nine exhibits for the plaintiff and four witnesses⁵ and seven exhibits for the defendant. From this record the following appears:

The Dunn Chemical Co. of San Francisco, California (Dunn) manufactures and distributes marine chemicals and the majority of its business is selling ships stores. It is a small operation with only three or four employees, and Mr. John W. Schrick, its president, does everything from making company decisions to making deliveries himself on occasion.

⁴ The two witnesses for plaintiff were John W. Schrick, president of the Dunn Chemical Co., the manufacturer and ultimate consignee of the marine cleanser, and James V. Loudon, a customhouse broker and president of the plaintiff company.

⁵ The four witnesses for defendant were: Mrs. Mary Jones, who from 1966 to 1970 was a clerk-stenographer in the entry and cashier section of Customs at San Francisco; Mrs. Delores Mann, who served as cashier clerk of Customs at San Francisco at the time the importation was entered; James J. Scott, who as supervisory import specialist for Customs at San Francisco, was the supervisor of the commodity team which handled the entry here in question; and John Thompson, import control officer for Customs at San Francisco since 1975.

Mr. Schrick testified that the merchandise covered by the entry in question—entry number 00751—is a chemical product manufactured in San Francisco, California to the specifications of Dunn. The product—which is known as “Dunall Dunrinse”—is a degreasing material that is used for cleaning and “upgrading” the double bottoms of ships or tankers. The name “Dunall” is a trademarked one.

The events giving rise to the present controversy were recounted by Mr. Schrick as follows: In 1966, Dunn sold 35 drums of Dunall Dunrinse to the Petrocon Marine Chemical Company (Petrocon).⁶ Mr. Schrick was personally involved in this sale. Mr. Peter Constantine, an agent for Petrocon,⁷ was responsible for the delivery instructions on the waybill which called for a split delivery of the 35 drum shipment of Dunall Dunrinse—26 drums were ordered to be delivered to the vessel, S.S. NILOS, and 9 drums were to be delivered to the American Pacific Corp.

According to Mr. Schrick, each of the 35 drums consisted of a 55 gallon metal “one-way” drum, marked by three Dunall Dunrinse labels, two attached at points directly below the top circumference of the drums and the third pasted on top.

Mr. Schrick testified that Petrocon could not divert the delivery of the 26 drums which were ordered on the waybill to be delivered to the S.S. NILOS because it would have no control over a waybill which showed Dunn as shipper and the cargo as being “prepaid.” Likewise, if the ship had sailed prior to delivery, and for that reason the delivery could not have been made, the shipping company would have contacted Dunn for notification and for further instructions. Such notification was never made.

Mr. Schrick testified that he knew that the order was placed on board the S.S. NILOS because he never received a complaint from either Petrocon or the owners of the vessel, who paid for the material and who would have complained if a full order for which they had paid had not been delivered.

Mr. Schrick further testified that he was later advised by Mr. Constantine that 21 drums of the 26 drums had been off-loaded in Vancouver, B.C., turned over to W. Greer Tidewater Shipping,⁸ and that the 21 drums would be returned to Dunn.

Mr. Schrick stated that on or about August 5, 1966, he inspected the 21 drums at the LASME warehouse in Oakland, California while

⁶ As evidence of this sale, plaintiff introduced a waybill from Ringsby Pacific, Ltd. (plaintiff's exhibit 5), which listed the consignee as American Pacific Corp. and which indicated that all of the drums were marked American Pacific Corp.

⁷ The name “Petrocon” is a term which stands for the name Peter Constantine.

⁸ W. Greer Tidewater Shipping, U.G.G., Vancouver, B.C., referred to in the Los Angeles-Seattle Motor Express, Inc. (hereinafter LASME) freight bill (plaintiff's exhibit 7) is either a husbanding agent with a warehouse or a ship's chandler.

the merchandise was under Customs bond control and found them to contain Dunall Dunrinse. Each of the 21 drums bore the Dunall Dunrinse label or the remnants of the said label. The labels evidenced wear and tear from exposure, but were complete enough so that Mr. Schrick was satisfied and accepted them as Dunall Dunrinse. Each of the drums, Mr. Schrick stated, was a one-way drum which didn't weather well, and was in such a condition that the merchandise was repacked in new drums, put back into stock and later sold as Dunall Dunrinse, while the used 21 drums went to the dump. Mr. Schrick said that he personally picked up and loaded the drums aboard the truck at the LASME terminal.

To prove that at the relevant time Customs had all the documents necessary to determine whether the claim for classification under item 800.00 should be allowed and that there were then no missing documents, plaintiff called as a witness Mr. James V. Loudon, the president of plaintiff James Loudon & Co., Inc. Mr. Loudon testified that Dunn retained his company, a customhouse broker, to enter the merchandise as American goods returned. Mr. Loudon emphasized that he was familiar with the entry procedures for articles entered under item 800.00, having had 25 years of experience in customs work. He stated that when there were missing documents at the time of entry, a card-like form and a bond were given for the missing documents.

According to Mr. Loudon, if the customhouse broker did not supply the card form and bond, he was informed by Customs of the necessity for such a bond either after entry or after documents had been presented for entry. He added that the Bureau normally indicated in the square entitled "Missing Documents," on the consumption entry (Customs Form 7501) whether or not any documents were missing. However, he stated that there was no indication of any missing documents pertaining to the importation in question in the space provided therefor on the consumption entry (plaintiff's exhibit 2). Thus, Mr. Loudon concluded that no bond was ever given for missing documents on the entry in question, i.e., entry number 00751.

Mr. Loudon further testified that whenever there are missing documents the customhouse broker is required to submit a bond as guarantee that those documents will be submitted at a later date. The customhouse broker, in turn, charges its client, the ultimate consignee, for both the deposit and the fee for its services in executing the bond. Continuing, Mr. Loudon testified that the Loudon invoice to Dunn for services relating to entry 00751 (plaintiff's exhibit 2) contained no charge for services in executing a bond. Mr. Schrick confirmed that, insofar as this entry is concerned, Dunn was never billed,

nor did it ever pay any fees relative to a bond to cover missing documents. It is to be added that the consumption entry forms do not show what documents accompanied the entry papers.

On the question of whether or not a section 514 protest was filed against the liquidation of December 12, 1967, Mr. Loudon testified that although he did not personally file a protest concerning the failure to liquidate the subject entry under item 800.00, he was advised either by the manager of plaintiff Loudon's San Francisco branch office or by the manager of the import department in that office that a protest had been filed. He stated that it was a practice of his company to prepare five copies of a protest which was to be filed and when a protest was filed with the San Francisco office of Customs in 1967 and 1968, a date-stamped and numbered copy of the protest was returned to his company by Customs. He further stated that licensing regulations required the customhouse broker to maintain a copy of a protest filed with Customs as a part of its records. However, he admitted that the Loudon company files do not contain a stamped and numbered copy of any section 514 protest against the liquidation covering the entry in question, despite the fact that it was the practice of Loudon's San Francisco office to retain copies of protests filed with Customs.

With respect to whether a request for reliquidation under section 520(c) was timely filed, Mr. Loudon referred to a letter from his company to Customs, dated *February 6, 1968*, requesting a section 520(c) review of the liquidation (plaintiff's exhibit 4). He said that he normally would have approved it since it is a form of protest, but he could not say with certainty that he had personal knowledge of either having seen this letter prior to its submission to Customs, nor could he testify as to the exact date of its submission to Customs.

It is to be noted that this letter, dated February 6, 1968, states:

Reference is made to Consumption Entry number 00751 of August 12, 1966, which was liquidated on December 12, 1967, with increased duties due in the amount of \$1313.55. Subject entry was entered in the name of James Loudon & Co., Inc., for the account of Dunn Chemical Co., and covered 21 Drums of Petrocon.

We hereby request review of subject entry under Section 520(c)(1) of the regulations for the following reasons:

- 1) Subject entry covered merchandise which was delivered to a vessel as Ship Stores, in Portland.
- 2) Subject merchandise under the trade name of Petrocon is manufactured only in the United States under subject Trade Name.

- 3) As per Signed Copy of Customs Form 3311, signed by an Officer of Dunn Chemical Corp., they advise that this shipment was in fact delivered as ships stores to the SS NILOS at Portland, however, it was discovered that shipment was not needed by the vessel and was offloaded at the nearest North Pacific Coast Port, Vancouver, B.C. and returned to the shipper, Dunn Chemical Co.

In view of the above and the attached, Customs Form 3311 and copy of Truck Blading [sic] showing delivery to Portland for SS NILOS, we respectfully request that the subject entry be reviewed and reliquidated "As Entered" as U.S. Goods returned and subject demand for increased duties, cancelled.

With respect to this letter, it is not without significance that a Customs Form 3311 in the record is dated *August 23, 1968* and not February 6, 1968, and that although the letter states that Customs Form 3311 was attached thereto, no such attachment was appended to the letter as received in evidence as plaintiff's exhibit 4. In this circumstance, the letter requesting section 502(c) relief could scarcely have been filed on a date when the attachment had not yet been prepared and signed. Further, plaintiff presented no testimony whatsoever to show that Customs Form 3311 was incorrectly dated.

It is also to be noted that an interoffice memorandum of May 4, 1972 from the acting regional commissioner of Customs to the district director, San Francisco, states that correspondence in his office indicated that the receipt date of this February 6 letter was in fact August 26, 1968 "which would make the filing of the CF 3311 * * * eight months after the date of the liquidation of the entry." (Defendant's exhibit C).

On another aspect, in order to show that a protest had been filed against the liquidation, Mr. Loudon referred to an interoffice memorandum from the Loudon company's San Francisco office to its Los Angeles office, dated September 3, 1970 (plaintiff's exhibit 3), which stated that an employee of Loudon had checked with "Delores Mann (head cashier)" of Customs at San Francisco and also stated that she had found a "skeleton file" which showed that entry 00751 had been protested but that her file did not have the protest number or date.

Defendant, in turn, called four witnesses to establish (1) that a section 514 protest against the liquidation had not been filed; (2) that the request for reliquidation under section 520(c) was untimely; and (3) that the protest under section 514 against the refusal to reliquidate under section 520(c) was untimely.

On the question of whether or not a section 514 protest had been filed challenging the liquidation, the defendant called Mrs. Mary

Jones, who from 1966 to 1970 was a clerk-stenographer in the entry and cashier section of Customs at San Francisco. Mrs. Jones testified that she did not work in the protest section during the relevant period, but did examine the protest log for 1967⁹ and all the protest copies from January 1968 through December 1969 but did not find a protest for entry 00751.

As previously noted, Mr. Loudon made reference to an interoffice memorandum of his company, dated September 3, 1970 (plaintiff's exhibit 3), which stated that an employee of Loudon had checked with "Delores Mann (head cashier)" of Customs and also stated that she had found a "skeleton file" which showed that entry 00751 had been protested but that her file did not have the protest number or date. To counter this evidence, defendant called Mrs. Delores Mann, who served as cashier clerk in the San Francisco office of Customs at the time the importation was entered in 1967. Mrs. Mann testified that a "skeleton file" is a numbered folder containing documents left in the file after a case was sent to the United States Attorney's office for collection. She said that the skeleton file might contain a copy of the letter to the United States Attorney; a copy of the letter to the surety company; and a final notice to the importer or his representative. With regard to increased duties, she testified that the cashier of Customs would, upon liquidation, make out a bill for the amount of the increased duty and notify the importer or his representative that the increase was due. If the increase was not paid within 30 days after liquidation, a notice was sent to the surety company and thereafter the matter was sent to the United States Attorney for collection—as was done in the present case.

Mrs. Mann further testified that in the event a protest had been filed, the entry papers—including the protest—would be in the import specialist's files and not in the cashier's files since protested cases are not sent out for collection to the United States Attorney's office.

With respect to defendant's second argument that the request for reliquidation was untimely, defendant introduced an interoffice memorandum from the acting regional commissioner of Customs to the district director, San Francisco, stating that the correspondence in his office indicated that the receipt date of plaintiff's February 6, 1968 letter requesting reliquidation under section 520(c) was in fact August 26, 1968. See defendant's exhibit C.

Defendant's third argument, it will be recalled, is that plaintiff's request for reliquidation was denied by Customs on October 24, 1968

⁹ In 1967 the protest log was a ledger listing protest numbers, entry numbers, dates of entry, the importer of record and, where applicable, the date an entry was forwarded to the Customs Court and/or any other action taken. In early 1968, the local procedure changed and an actual copy of the protest with all notations as to disposition was kept in a consecutively numbered series.

and not January 12, 1973, as claimed by plaintiff. To support this argument, defendant called Mr. James Scott who was the supervisor of the commodity team of customs which handled the importation here in question. He testified that he had been directed by the regional commissioner of Customs to notify the importer in writing of the district director's denial of the importer's request for reliquidation under section 520(c) and that the Loudon company had been notified by letter, dated October 24, 1968, that its request had been denied. See defendant's exhibit B-4. In addition, by letter dated March 13, 1972, Raymond B. Turner, the director, division of entry procedures and penalties, Bureau of Customs, Washington. D.C., wrote Mr. Loudon as follows (plaintiff's exhibit 1):

This is in response to your letter of December 27, 1971, and February 1, 1972, concerning entry 00751 of August 12, 1966, filed for the account of the Dunn Chemical Company.

Based on our review of the documentary evidence presented, we have concluded that the record does not confirm your claim that the merchandise was entitled to be admitted duty free.

The evidence does not confirm that the 21 drums of cleaning compound for which duty free entry is being sought as American goods returned are part of the 26 drum split shipment covered by Freight Bill No. 7226661 of Ringsby-Pacific Ltd. exported on October 14, 1965. Shipping documents which might confirm the stated lading in Portland and unlading in Vancouver have not been submitted. The record, furthermore, contains conflicting evidence as to where, by what method the exportation took place, and whether the compound was ever laden aboard a vessel.

In view of the above, we do not find any basis for concluding that the district director's decision was incorrect.

Also, as pertinent to this question, defendant introduced a letter, dated January 12, 1973, from William B. Lim, director, classification and value division of the San Francisco office of Customs, to the attorneys for plaintiff, which reads as follows (defendant's exhibit B-3):

This is in reply to your letter of December 18, 1972, regarding San Francisco Free Entry 00751, entered August 12, 1966, in the name of James Loudon Co., Inc. a/c Dunn's Chemical Company. The entry was liquidated on December 12, 1967.

The entry in question has been the subject of much correspondence between this office and Mr. James V. Loudon, president of James Loudon Co., Inc.

At the request of the Bureau of Customs a narrative report and supporting documents were forwarded to the Bureau on February 16, 1972, in order that they might decide whether a refund was in order.

We are enclosing a copy of the Bureau's letter of March 13, 1972, to Mr. James V. Loudon and this office now considers the matter closed.¹⁰

*Whether Plaintiff Filed a Protest
Contesting the Liquidation*

We consider first against the foregoing background whether plaintiff filed a protest under section 514 contesting the liquidation of the merchandise under item 405.35. As to this, the evidence is overwhelming that such a protest was *not* filed. Thus, Mrs. Jones of Customs testified without contradiction that the 1967 protest log of Customs and its protest copies from January 1968 through December 1968—which documents were examined by counsel for plaintiff at trial—neither referred to such a protest nor contained a copy thereof. Beyond that, Mr. Loudon testified that it was the practice of his company to prepare five copies of a protest which was to be filed and when a protest was filed with the San Francisco office of Customs in 1967 and 1968, a date-stamped and numbered copy of the protest was returned to his company by Customs. He further testified that licensing regulations required the customhouse broker to maintain a copy of a protest filed with Customs as a part of its records. However, he admitted that the Loudon company files do not contain a stamped and numbered copy of *any* section 514 protest covering the entry in question—this despite the fact that it was the practice of Loudon's San Francisco office to retain copies of protests filed with Customs and despite the fact that licensing regulations required the customhouse broker to maintain in its records a copy of any protest filed with Customs.

*Whether Plaintiff Filed a Timely Request
for Reliquidation Under Section 520(c)*

Previously it has been observed that prior to October 1, 1970 a request for reliquidation under section 520(c) had to be made within 60 days after liquidation when the liquidation was made more than ten months after the date of the entry. Since the entry in issue was entered on August 12, 1966 and liquidation was made on December 12, 1967, plaintiff had 60 days after December 12, 1967 to file a request for reliquidation under section 520(c). On this aspect, plaintiff emphasizes that a letter, dated *February 6, 1968*, from Loudon to Customs requesting reliquidation under section 520(c)—which letter is quoted, *supra* (plaintiff's exhibit 4)—was filed with the San Francisco office of Customs and that the request was therefore timely. Defendant, on the

¹⁰ As a further witness, defendant called Mr. John Thompson, import control officer for Customs at San Francisco since 1975, who testified to the effect that various documents—which were received in evidence—were kept in the regular course of business.

other hand, maintains that the request for liquidation was not filed on February 6, 1968, but rather was filed on August 26, 1968 and, hence, was untimely.

Again, the evidence is overwhelming that the request for reliquidation was not filed until the latter part of August 1968—some eight months after the liquidation—and therefore was untimely. For one thing, the Loudon company letter dated February 6, 1968, requesting reliquidation under section 520(c), makes reference to a signed copy of Customs Form 3311. However, the Customs Form 3311 in the record is dated *August 23, 1968* and not February 6, 1968. It is also to be noted that although the letter states that Customs Form 3311 was attached thereto, no such attachment was appended to the letter as received in evidence. The short of the matter is that the letter requesting section 520(c) relief could not have been filed on a date when the attached Customs Form 3311 had not yet been prepared and signed. Further, it is not without significance that plaintiff presented no testimony whatsoever to show that Customs Form 3311 was incorrectly dated.

Also bearing on this matter is an interoffice memorandum of May 4, 1972 (which also has been referred to previously) from the acting regional commissioner of Customs to the district director, San Francisco, stating that correspondence in his office indicated that the receipt date of this February 6 letter was in fact August 26, 1968.

*Whether Plaintiff Filed a Timely
Protest Under Section 514 Against
Customs' Refusal to Reliquidate
Under Section 520(c)*

Even assuming *arguendo* that plaintiff filed a timely request for reliquidation under section 520(c), the record is crystal clear that it did not file a timely protest under section 514 against Customs' refusal to reliquidate under section 520(c). As has been discussed previously, section 514, as amended effective October 1, 1970, requires a protest to be filed within 90 days after refusal by Customs to reliquidate under section 520(c). Pertinent then is *when* Customs refused to reliquidate the entry under the latter section. Highly relevant on this score is a letter, dated March 13, 1972 (and quoted previously), which Mr. Raymond E. Turner, director, division of entry procedures, Bureau of Customs, wrote to Mr. Loudon. This letter, to repeat, reads as follows (plaintiff's exhibit 1):

This is in response to your letter of December 27, 1971, and February 1, 1972, concerning entry 00751 of August 12, 1966, filed for the account of the Dunn Chemical Company.

Based on our review of the documentary evidence presented, we have concluded that the record does not confirm your claim that the merchandise was entitled to be admitted duty free.

The evidence does not confirm that the 21 drums of cleaning compound for which duty free entry is being sought as American goods returned are part of the 26 drum split shipment covered by Freight Bill No. 7226661 of Ringsby-Pacific Ltd. exported on October 14, 1965. Shipping documents which might confirm the stated lading in Portland and unlading in Vancouver have not been submitted. The record, furthermore, contains conflicting evidence as to where, by what method the exportation took place, and whether the compound was ever laden aboard a vessel.

In view of the above, we do not find any basis for concluding that the district director's decision was incorrect.

Thus, at the very latest, on March 13, 1972—if not sooner—there was a final refusal by Customs to reliquidate the entry under section 520(c)—as is made plain by Mr. Turner's letter to Mr. Loudon. And since the protest against this refusal was not filed until February 21, 1973—almost 11 months after such refusal—it is apparent that plaintiff's protest against the refusal by Customs to reliquidate the entry under section 520(c) is time-barred.

It is quite true that on January 12, 1973, Mr. William B. Lim, director, classification and valuation division of the San Francisco office of Customs, wrote the attorneys for plaintiff the following letter (which also has been quoted previously):

This is in reply to your letter of December 18, 1972, regarding San Francisco Free Entry 00751, entered August 12, 1966, in the name of James Loudon Co., Inc. a/c Dunn's Chemical Company. The entry was liquidated on December 12, 1967.

The entry in question has been the subject of much correspondence between this office and Mr. James V. Loudon, president of James Loudon Co., Inc.

At the request of the Bureau of Customs a narrative report and supporting documents were forwarded to the Bureau on February 16, 1972, in order that they might decide whether a refund was in order.

We are enclosing a copy of the Bureau's letter of March 13, 1972, to Mr. James V. Loudon and this office now considers the matter closed.

In this setting, plaintiff insists that it was not until January 12, 1973—the date of Mr. Lim's letter—that its request for reliquidation was denied by Customs, thus making its protest of February 21, 1973 timely under section 514. However, Mr. Lim's letter cannot be considered in any respect as a refusal by Customs to reliquidate. Rather, it is simply a summary of actions that had been taken by Customs in the past concerning the entry in question. Particularly significant is

the last sentence in Mr. Lim's letter, stating: "We are enclosing a copy of the *Bureau's letter of March 13, 1972* to Mr. James V. Loudon [which letter has been quoted above] and this office now considers the matter closed." [Emphasis added.]

In summary, plaintiff's claim is time-barred, thus making it unnecessary to reach the merits of the case, i.e., whether or not plaintiff is entitled to relief under section 520(c). Plaintiff's claim is therefore overruled and judgment will be entered accordingly.

Decisions of the United States Customs Court

Abstracts Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, December 27, 1977.

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
				Per. or Item No. and Rate	Item	Per. or Item No. and Rate	Item		
P77/210	Ford, J. December 19, 1977	David Chow & Company	68/68502	Item 653.37 17%	Item 653.35 9%	Item 653.35 9%	Item 653.35 9%	U.S. v. Morris Friedman & Co. (C.A.D.'s 1156, 1157)	Los Angeles Brass candlesticks
P77/211	Ford, J. December 19, 1977	The Little Jones Co., Inc.	75-11-02781	Item 653.37 9.5%	Item 653.35 5%	Item 653.35 5%	Item 653.35 5%	U.S. v. Morris Friedman & Co. (C.A.D.'s 1156, 1157)	Los Angeles Brass illuminating articles
P77/212	Richardson, J. December 19, 1977	New York Merchandise Co., Inc.	69/44578, etc.	Item 653.39 19%	Item 688.40 10% or 9%	Item 688.40 10% or 9%	Item 688.40 10% or 9%	Ross Products, Inc. v. U.S. (C.A.D. 954) U.S. v. L. Badlin & Son, Inc. (C.A.D. 1111)	San Diego Star trestops, circle tree- tops, etc.

P77/213	Richardson, J. December 19, 1977	Raytheon Company	76-8-01499	Item 637.60 6%	Items 637.60/ 807.60 0% upon value of inte- grated circuit less declared values of pre- fabricated U.S. manu- factured die, wire, frame, base and cap, as set forth in schedule attached to decision and judgment	U.S. v. Texas Instruments Incorporated (C.A.D. 1178)	San Francisco American goods returned; integrated circuits; U.S. components
P77/214	Richardson, J. December 19, 1977	Wild Heerbrugg Instru- ments, Inc., et al.	74-10-02907, etc.	Item 708.73 22.5%	Item 708.80 13%	Olympus Corp. of America v. U.S. (C.D. 4538)	New York Microscope frames and mountings
P77/215	Watson, J. December 19, 1977	Fedco, Inc.	76-8-01873	Item 389.60 2½¢ per lb. + 15%	Item 735.20 10%	The Newman Importing Co., Inc. v. U.S. (C.D. 4648)	Los Angeles Tents
P77/216	Boe, J. December 19, 1977	The Jordan International Co.	73-9-02522	Item 608.87 8% Item 948.00 10%	Item 608.87 8%	Agreed statement of facts	Chicago Hot-rolled steel sheets, pickled, not alloy
P77/217	Ford, J. December 21, 1977	Hallmark Cards, Inc.	70/44400, etc.	Item 633.37 17%	Item 633.35 9%	U.S. v. Morris Friedman & Co. (C.A.D.'s 1156, 1157)	Kansas City (St. Louis) Brass candlesticks
P77/218	Watson, J. December 21, 1977	Standard Surplus Sales, Inc., et al.	71-8-00659, etc.	Item 389.60 2½¢ per lb. + 15%, 18%, 21% or 24%	Item 735.20 10%, 12%, 14%, or 16%	The Newman Importing Co., Inc. v. U.S. (C.D. 4648)	Los Angeles Tents

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisal Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R77/152	Rao, J. December 21, 1977	Rickwood Motors	R66/15112, etc.	Cost of production	At values specified in column designated "Claimed Value" on schedule attached to decision and judgment	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Savannah Volkswagen auto- mobiles
R77/153	Rao, J. December 21, 1977	R. W. Smith, a/c Jattke & Capels	R67/10513, etc.	Cost of production	At values specified in column designated "Claimed Value" on schedule B attached to decision and judgment	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Houston Volkswagen auto- mobiles

R77/154	Watson, J. December 21, 1977	Ciba Chemical and Dye Company	R70/7380, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by cus- toms officer at time of appraisement; less 20.2% representing profit and general ex- penses usually made in U.S. on sales of dye- stuffs of same class or kind; less costs of transportation and in- surance from place of shipment to place of delivery in amounts determined by cus- toms officer at time of appraisement; divided by 1.38 or such other factor applied by cus- toms officer, to allow for customs duties payable on imported dye-stuffs	U.S. v. Celgy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dye-stuffs
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ERRATA

In the Customs Bulletin of December 7, 1977, Vol. 11, No. 49 make the following corrections:

Abstract P77/189 on page 20—under "ASSESSED" column change "Item 283.81" to "Item 382.81"

Abstract R77/135 on page 25—under "COURT NO." column change "R68/13402" to "R69/13402"

Abstract R77/137 on page 26—under "COURT NO." column change "R65/09686" to "R67/09686"

Abstract R77/138 on page 27—under "COURT NO." column change "R65/17902" to "R67/17902"

Abstract R77/139 on page 28—under "JUDGE & DATE OF DECISION" column change "November 10, 1977" to "November 11, 1977"; under "COURT NO." column change "R65/22452" to "R66/22452"

Index

U.S. Customs Service

	T.D. No.
Treasury Decisions:	
Antidumping; elemental sulphur from Mexico; modification or revocation of finding; sec. 153.46, C.R., amended.....	78-13
Countervailing duties; sec. 159.47(f), C.R., amended:	
Final determination; butter cookies from Denmark.....	78-12
Waiver; butter cookies from Denmark.....	78-11
Foreign currencies:	
Daily rates for Hong Kong dollar, Iran rial; Philippines peso, Singapore dollar, Thailand baht (tical); December 5-16, 1977---	78-15
Rates which varied from the quarterly rate published in T.D. 77-260 by 5%; December 5-16, 1977.....	78-14
Proposed Rulemaking:	
Entry of merchandise; proposed amendments relating to the documents and information required to be filed at the time of importation of certain articles of steel; 19 CFR Part 141; p. 20.	

Customs Court

American goods returned:	
Marine cleanser, C.D. 4727	
Untimeliness of claim, C.D. 4727	
Construction:	
Tariff Act of 1930:	
Par. 514, C.D. 4727	
Par. 520(c), C.D. 4727	
Tariff Schedules of the United States:	
Item 405.35, C.D. 4727	
Item 800.00, C.D. 4727	
U.S. Code:	
Title 19:	
Sec. 1514 (1970 ed.), C.D. 4727	
Sec. 1520(c), C.D. 4727	
Marine cleanser; American goods returned, C.D. 4727	
Protest:	
Lost, C.D. 4727	
Untimely, C.D. 4727	
Request for reliquidation, untimely, C.D. 4727	
Untimeliness of claim; American goods returned, C.D. 4727	

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